

HOUSE BILL NO. 1730

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws

on \_\_\_\_\_)

(Patron Prior to Substitute--Delegate Bennett-Parker)

A BILL to amend and reenact §§ 4.1-225, 4.1-325, 4.1-325.2, and 4.1-509.1 of the Code of Virginia, relating to alcoholic beverage control; grounds for suspension or revocation of license; exception.

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 4.1-225, 4.1-325, 4.1-325.2, and 4.1-509.1 of the Code of Virginia are amended and reenacted as follows:**

**§ 4.1-225. Grounds for which Board may suspend or revoke licenses; exception.**

A. The Board may suspend or revoke any license other than a brewery license, in which case the Board may impose penalties as provided in § 4.1-227, if it has reasonable cause to believe that:

1. The licensee, or if the licensee is a partnership, any general partner thereof, or if the licensee is an association, any member thereof, or a limited partner of 10 percent or more with voting rights, or if the licensee is a corporation, any officer, director, or shareholder owning 10 percent or more of its capital stock, or if the licensee is a limited liability company, any member-manager or any member owning 10 percent or more of the membership interest of the limited liability company:

a. Has misrepresented a material fact in applying to the Board for such license;

b. Within the five years immediately preceding the date of the hearing held in accordance with § 4.1-227, has (i) been convicted of a violation of any law, ordinance, or regulation of the Commonwealth, of any county, city, or town in the Commonwealth, of any state, or of the United States, applicable to the manufacture, transportation, possession, use, or sale of alcoholic beverages; (ii) violated any provision of Chapter 3 (§ 4.1-300 et seq.); (iii) committed a violation of the Wine Franchise Act (§ 4.1-400 et seq.) or the Beer Franchise Act (§ 4.1-500 et seq.) in bad faith; (iv) violated or failed or refused to comply with

26 any regulation, rule, or order of the Board; or (v) failed or refused to comply with any of the conditions  
27 or restrictions of the license granted by the Board;

28 c. Has been convicted in any court of a felony or of any crime or offense involving moral turpitude  
29 under the laws of any state, or of the United States;

30 d. Is not the legitimate owner of the business conducted under the license granted by the Board, or  
31 other persons have ownership interests in the business which have not been disclosed;

32 e. Cannot demonstrate financial responsibility sufficient to meet the requirements of the business  
33 conducted under the license granted by the Board;

34 f. Has been intoxicated or under the influence of some self-administered drug while upon the  
35 licensed premises;

36 g. Has maintained the licensed premises in an unsanitary condition, or allowed such premises to  
37 become a meeting place or rendezvous for members of a criminal street gang as defined in § 18.2-46.1 or  
38 persons of ill repute, or has allowed any form of illegal gambling to take place upon such premises;

39 h. Knowingly employs in the business conducted under such license, as agent, servant, or  
40 employee, other than a busboy, cook, or other kitchen help, any person who has been convicted in any  
41 court of a felony or of any crime or offense involving moral turpitude, or who has violated the laws of the  
42 Commonwealth, of any other state, or of the United States, applicable to the manufacture, transportation,  
43 possession, use, or sale of alcoholic beverages;

44 i. Subsequent to the granting of his original license, has demonstrated by his police record a lack  
45 of respect for law and order;

46 j. Has allowed the consumption of alcoholic beverages upon the licensed premises by any person  
47 whom he knew or had reason to believe was (i) less than 21 years of age, (ii) interdicted, or (iii) intoxicated,  
48 or has allowed any person whom he knew or had reason to believe was intoxicated to loiter upon such  
49 licensed premises;

50 k. Has allowed any person to consume upon the licensed premises any alcoholic beverages except  
51 as provided under this subtitle;

52           1. Is physically unable to carry on the business conducted under such license or has been  
53 adjudicated incapacitated;

54           m. Has allowed any obscene literature, pictures, or materials upon the licensed premises;

55           n. Has possessed any illegal gambling apparatus, machine, or device upon the licensed premises;

56           o. Has upon the licensed premises (i) illegally possessed, distributed, sold, or used, or has  
57 knowingly allowed any employee or agent, or any other person, to illegally possess, distribute, sell, or use  
58 marijuana, controlled substances, imitation controlled substances, drug paraphernalia, or controlled  
59 paraphernalia as those terms are defined in Articles 1 (§ 18.2-247 et seq.) and 1.1 (§ 18.2-265.1 et seq.)  
60 of Chapter 7 of Title 18.2 and the Drug Control Act (§ 54.1-3400 et seq.); (ii) laundered money in violation  
61 of § 18.2-246.3; or (iii) conspired to commit any drug-related offense in violation of Article 1 or 1.1 of  
62 Chapter 7 of Title 18.2 or the Drug Control Act. The provisions of this subdivision shall also apply to any  
63 conduct related to the operation of the licensed business that facilitates the commission of any of the  
64 offenses set forth herein;

65           p. Has failed to take reasonable measures to prevent (i) the licensed premises, (ii) any premises  
66 immediately adjacent to the licensed premises that are owned or leased by the licensee, or (iii) any portion  
67 of public property immediately adjacent to the licensed premises from becoming a place where patrons of  
68 the establishment commit criminal violations of Article 1 (§ 18.2-30 et seq.), 2 (§ 18.2-38 et seq.), 2.1 (§  
69 18.2-46.1 et seq.), 2.2 (§ 18.2-46.4 et seq.), 3 (§ 18.2-47 et seq.), 4 (§ 18.2-51 et seq.), 5 (§ 18.2-58 et  
70 seq.), 6 (§ 18.2-59 et seq.), or 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2; Article 2 (§ 18.2-266 et seq.)  
71 of Chapter 7 of Title 18.2; Article 3 (§ 18.2-346 et seq.) or 5 (§ 18.2-372 et seq.) of Chapter 8 of Title  
72 18.2; or Article 1 (§ 18.2-404 et seq.), 2 (§ 18.2-415), or 3 (§ 18.2-416 et seq.) of Chapter 9 of Title 18.2  
73 and such violations lead to arrests that are so frequent and serious as to reasonably be deemed a continuing  
74 threat to the public safety; or

75           q. Has failed to take reasonable measures to prevent an act of violence resulting in death or serious  
76 bodily injury, or a recurrence of such acts, from occurring on (i) the licensed premises, (ii) any premises  
77 immediately adjacent to the licensed premises that is owned or leased by the licensee, or (iii) any portion  
78 of public property immediately adjacent to the licensed premises.

79           2. The place occupied by the licensee:  
80           a. Does not conform to the requirements of the governing body of the county, city, or town in  
81 which such establishment is located, with respect to sanitation, health, construction, or equipment, or to  
82 any similar requirements established by the laws of the Commonwealth or by Board regulations;  
83           b. Has been adjudicated a common nuisance under the provisions of this subtitle or § 18.2-258; or  
84           c. Has become a meeting place or rendezvous for illegal gambling, illegal users of narcotics,  
85 drunks, prostitutes, pimps, panders, or habitual law violators or has become a place where illegal drugs  
86 are regularly used or distributed. The Board may consider the general reputation in the community of such  
87 establishment in addition to any other competent evidence in making such determination.

88           3. The licensee or any employee of the licensee discriminated against any member of the armed  
89 forces of the United States by prices charged or otherwise.

90           4. The licensee, his employees, or any entertainer performing on the licensed premises has been  
91 convicted of a violation of a local public nudity ordinance for conduct occurring on the licensed premises  
92 and the licensee allowed such conduct to occur.

93           5. Any cause exists for which the Board would have been entitled to refuse to grant such license  
94 had the facts been known.

95           6. The licensee is delinquent for a period of 90 days or more in the payment of any taxes, or any  
96 penalties or interest related thereto, lawfully imposed by the locality where the licensed business is located,  
97 as certified by the treasurer, commissioner of the revenue, or finance director of such locality, unless (i)  
98 the outstanding amount is de minimis; (ii) the licensee has pending a bona fide application for correction  
99 or appeal with respect to such taxes, penalties, or interest; or (iii) the licensee has entered into a payment  
100 plan approved by the same locality to settle the outstanding liability.

101           7. Any other cause authorized by this subtitle.

102           B. Notwithstanding the provisions of subdivision A 1 h, and with respect to the employment of  
103 any person who has been convicted in any court of a felony or any crime involving moral turpitude, a  
104 licensee may (i) immediately employ such person if the offense occurred more than two years preceding

105 the date of employment or (ii) apply to the Authority for approval of such employment if the offense  
106 occurred within two years preceding the date of employment.

107 **§ 4.1-325. Prohibited acts by mixed beverage licensees; penalty.**

108 A. In addition to § 4.1-324, no mixed beverage licensee nor any agent or employee of such licensee  
109 shall:

110 1. Sell or serve any alcoholic beverage other than as authorized by law;

111 2. Sell any authorized alcoholic beverage to any person or at any place except as authorized by  
112 law;

113 3. Allow at the place described in his license the consumption of alcoholic beverages in violation  
114 of this subtitle;

115 4. Keep at the place described in his license any alcoholic beverage other than that which he is  
116 licensed to sell;

117 5. Misrepresent the brand of any alcoholic beverage sold or offered for sale;

118 6. Keep any alcoholic beverage other than in the bottle or container in which it was purchased by  
119 him except (i) for a frozen alcoholic beverage, which may include alcoholic beverages in a frozen drink  
120 dispenser of a type approved by the Board; (ii) in the case of wine, in containers of a type approved by the  
121 Board pending automatic dispensing and sale of such wine; and (iii) as otherwise provided by Board  
122 regulation. Neither this subdivision nor any Board regulation shall prohibit any mixed beverage licensee  
123 from premixing containers of sangria, to which spirits may be added, to be served and sold for  
124 consumption on the licensed premises;

125 7. Refill or partly refill any bottle or container of alcoholic beverage or dilute or otherwise tamper  
126 with the contents of any bottle or container of alcoholic beverage, except as provided by Board regulation  
127 adopted pursuant to subdivision B 11 of § 4.1-111;

128 8. Sell or serve any brand of alcoholic beverage which is not the same as that ordered by the  
129 purchaser without first advising such purchaser of the difference;

130 9. Remove or obliterate any label, mark, or stamp affixed to any container of alcoholic beverages  
131 offered for sale;

132 10. Deliver or sell the contents of any container if the label, mark, or stamp has been removed or  
133 obliterated;

134 11. Allow any obscene conduct, language, literature, pictures, performance, or materials on the  
135 licensed premises;

136 12. Allow any striptease act on the licensed premises;

137 13. Allow persons connected with the licensed business to appear nude or partially nude;

138 14. Consume or allow the consumption by an employee of any alcoholic beverages while on duty  
139 and in a position that is involved in the selling or serving of alcoholic beverages to customers.

140 The provisions of this subdivision shall not prohibit any retail licensee or his designated employee  
141 from (i) consuming product samples or sample servings of (a) beer or wine provided by a representative  
142 of a licensed beer or wine wholesaler or manufacturer or (b) a distilled spirit provided by a permittee of  
143 the Board who represents a distiller, if such samples are provided in accordance with Board regulations  
144 and the retail licensee or his designated employee does not violate the provisions of subdivision A 1 f of  
145 § 4.1-225 or (ii) tasting an alcoholic beverage that has been or will be delivered to a customer for quality  
146 control purposes;

147 15. Deliver to a consumer an original bottle of an alcoholic beverage purchased under such license  
148 whether the closure is broken or unbroken except in accordance with § 4.1-206.3.

149 The provisions of this subdivision shall not apply to the delivery of:

150 a. "Soju." For the purposes of this subdivision, "soju" means a traditional Korean alcoholic  
151 beverage distilled from rice, barley or sweet potatoes; or

152 b. Spirits, provided (i) the original container is no larger than 375 milliliters, (ii) the alcohol content  
153 is no greater than 15 percent by volume, and (iii) the contents of the container are carbonated and  
154 perishable;

155 16. Be intoxicated while on duty or employ an intoxicated person on the licensed premises;

156 17. Conceal any sale or consumption of any alcoholic beverages;

157 18. Fail or refuse to make samples of any alcoholic beverages available to the Board upon request  
158 or obstruct special agents of the Board in the discharge of their duties;

159 19. Store alcoholic beverages purchased under the license in any unauthorized place or remove  
160 any such alcoholic beverages from the premises;

161 20. Knowingly employ in the licensed business any person who has the general reputation as a  
162 prostitute, panderer, habitual law violator, person of ill repute, user or peddler of narcotics, or person who  
163 drinks to excess or engages in illegal gambling;

164 21. Keep on the licensed premises, except for the premises of a mixed beverage casino licensee, a  
165 slot machine or any prohibited gambling or gaming device, machine, or apparatus;

166 22. Make any gift of an alcoholic beverage, other than as a gift made (i) to a personal friend, as a  
167 matter of normal social intercourse, so long as the gift is in no way a shift or device to evade the restriction  
168 set forth in this subdivision; (ii) to a person responsible for the planning, preparation or conduct on any  
169 conference, convention, trade show or event held or to be held on the premises of the licensee, when such  
170 gift is made in the course of usual and customary business entertainment and is in no way a shift or device  
171 to evade the restriction set forth in this subdivision; (iii) pursuant to subsection B of § 4.1-209; (iv)  
172 pursuant to subdivision A 10 of § 4.1-201; (v) by a mixed beverage casino licensee to a patron of such  
173 licensee in accordance with the provisions of subdivision A 15 of § 4.1-206.3; or (vi) pursuant to any  
174 Board regulation. Any gift permitted by this subdivision shall be subject to the taxes imposed by this  
175 subtitle on sales of alcoholic beverages. The licensee shall keep complete and accurate records of gifts  
176 given in accordance with this subdivision; or

177 23. Establish any normal or customary pricing of its alcoholic beverages that is intended as a shift  
178 or device to evade any "happy hour" regulations adopted by the Board; however, a licensee may increase  
179 the volume of an alcoholic beverage sold to a customer if there is a commensurate increase in the normal  
180 or customary price charged for the same alcoholic beverage.

181 B. Any person convicted of a violation of this section shall be guilty of a Class 1 misdemeanor.

182 C. The provisions of subdivisions A 12 and A 13 shall not apply to persons operating theaters,  
183 concert halls, art centers, museums, or similar establishments that are devoted primarily to the arts or  
184 theatrical performances, when the performances that are presented are expressing matters of serious  
185 literary, artistic, scientific, or political value.

186           **§ 4.1-325.2. Prohibited acts by employees of wine or beer licensees; penalty.**

187           A. In addition to the provisions of § 4.1-324, no retail wine or beer licensee or his agent or  
188 employee shall consume any alcoholic beverages while on duty and in a position that is involved in the  
189 selling or serving of alcoholic beverages to customers.

190           The provisions of this subsection shall not prohibit any retail licensee or his designated employee  
191 from (i) consuming product samples or sample servings of beer or wine provided by a representative of a  
192 licensed beer or wine wholesaler or manufacturer, if such samples are provided in accordance with Board  
193 regulations and the retail licensee or his designated employee does not violate the provisions of  
194 subdivision A 1 f of § 4.1-225 or (ii) tasting an alcoholic beverage that has been or will be delivered to a  
195 customer for quality control purposes.

196           B. For the purposes of subsection A, a wine or beer wholesaler or farm winery licensee or its  
197 employees that participate in a wine or beer tasting sponsored by a retail wine or beer licensee shall not  
198 be deemed to be agents of the retail wine or beer licensee.

199           C. No retail wine or beer licensee, or his agent or employee shall make any gift of an alcoholic  
200 beverage, other than as a gift made (i) to a personal friend, as a matter of normal social intercourse, so  
201 long as the gift is in no way a shift or device to evade the restriction set forth in this subsection; (ii) to a  
202 person responsible for the planning, preparation or conduct on any conference, convention, trade show or  
203 event held or to be held on the premises of the licensee, when such gift is made in the course of usual and  
204 customary business entertainment and is in no way a shift or device to evade the restriction set forth in  
205 this subsection; (iii) pursuant to subsection B of § 4.1-209; (iv) pursuant to subdivision A 10 of § 4.1-201;  
206 or (v) pursuant to any Board regulation. Any gift permitted by this subsection shall be subject to the taxes  
207 imposed by this subtitle on sales of alcoholic beverages. The licensee shall keep complete and accurate  
208 records of gifts given in accordance with this subsection.

209           D. Any person convicted of a violation of this section shall be subject to a civil penalty in an  
210 amount not to exceed \$500.

211           **§ 4.1-509.1. Board proceedings; contemplated actions by brewery or wholesaler.**

212 A. For purposes of this section, "contemplated action" means an action proposed by a brewery or  
213 wholesaler that (i) if carried out would violate any provision of this chapter or clause (v) of subdivision A  
214 1 b-(v) of § 4.1-225 and (ii) is demonstrated by a specific written statement authored by a brewery or an  
215 employee of a wholesaler who is specifically authorized by virtue of job title and responsibility to make  
216 such statement and such other evidence as may be required by the Board pursuant to the facts of any given  
217 circumstance.

218 B. Subsequent to compliance with subsection D, any wholesaler may file a petition against a  
219 brewery, and any brewery may file a petition against a wholesaler, in which the petitioner alleges that the  
220 respondent named in the petition as a matter of past or present fact has contemplated action that if carried  
221 out would violate any provision of this chapter or clause (v) of subdivision A 1 b-(v) of § 4.1-225. Any  
222 such petition filed shall identify with specificity the alleged contemplated action, the document in which  
223 such contemplated action is described or authorized, and specify the provision of law or regulation that  
224 the contemplated action would violate if carried out. The petition shall include a statement that a  
225 controversy as to the lawfulness of the contemplated action exists. The statement shall be supported by  
226 evidence of the petitioner's good faith effort to resolve the controversy in accordance with subsection D.  
227 The petitioner shall have the burden of establishing that the contemplated actions identified in the petition,  
228 if carried out, would violate any provision of law or regulation enumerated in this subsection. The Board  
229 may, if it finds that a brewery or wholesaler has frivolously maintained a petition or defense to a  
230 proceeding pursuant to this chapter, award reasonable costs and attorney fees to the prevailing party.

231 C. Any petition filed by a brewery or wholesaler pursuant to this section shall be delivered to the  
232 Secretary of the Board. The Board shall promptly issue a written determination as to whether a violation  
233 or attempted violation as alleged in the petition has occurred. In addition, the Board shall promptly issue  
234 a written determination as to whether a violation alleged in the petition would occur if the contemplated  
235 action identified in the petition were to be carried out.

236 D. Prior to filing a petition, a party shall communicate with the party alleged to be considering a  
237 contemplated action and initiate a good faith attempt to resolve the issue in question. If within 21 days of

**238** initiating the communication required by this subsection, or such longer period of time if mutually agreed  
**239** upon, there is no resolution, either party may proceed to file a petition in accordance with subsection B.

**240** #